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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

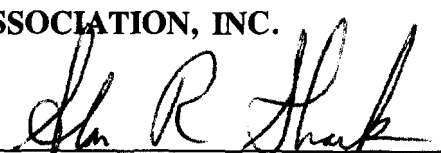
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PETITION FOR RECONSIDERATION

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:


Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of one aspect of the Commission's decision in the above-entitled proceeding.¹ Specifically, AMTA recommends that the FCC refine its definition of "covered SMR providers" to reflect more accurately the policy objectives articulated in the Order.

I. INTRODUCTION

1. The instant R&O is one of several recent Commission decisions in which the FCC has begun to define in greater detail the regulatory rights and responsibilities of Commercial Mobile Radio Service ("CMRS") providers.² AMTA endorses the FCC's efforts to complete construction of the CMRS regulatory framework that became necessary when Congress amended the Communications Act to reflect a CMRS/Private Mobile Radio Service ("PMRS") distinction.³ Even a dynamic marketplace such as wireless telecommunications cannot reach its full potential in the absence of a reasonable degree of regulatory certainty. Operators and prospective licensees must understand their opportunities and obligations if they are to make prudent business decisions.

¹ Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 94-54, FCC 96-284 (rel. August 15, 1996) ("R&O" or "Order").

² The Commission in recent months has adopted rules regarding CMRS Resale (CC Docket No. 94-54), E911 (CC Docket No. 95-116), Flexible Use (WT Docket No. 96-6), RF Emission Guidelines (ET Docket No. 93-62), and Telephone Number Portability (CC Docket 95-116).

³ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("COBRA").

2. The Association also supports what it believes to be a fundamental underpinning of the Commission's analyses in all of these proceedings: there is a substantive distinction between those CMRS licensees "competing in the mass market for real-time, two-way voice services", R&O at ¶ 12, and those "offering mainly dispatch services to specialized customers in a non-cellular system configuration", R&O at ¶ 14, that should be reflected in the regulatory burdens imposed upon them. In AMTA's opinion, the definition of "covered SMR provider", a category of licensee treated as equivalent to cellular and broadband PCS in this and other recent FCC decisions,⁴ does not accurately reflect the Commission's own policy assessment. The result in the instant proceeding is to impose manual roaming obligations on many SMR licensees that offer primarily dispatch service to business customers in a distinctly non-cellular system design despite a Commission determination that "the costs of applying the roaming rule to their operations would outweigh the benefits."⁵ Order at ¶ 14. Thus, the Association recommends that the FCC refine its definition of covered SMR provider as detailed below.

II. DISCUSSION

3. The Order defines covered SMR providers as follows:

These "covered SMR providers" include two classes of SMR licensees. The first consists of 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. The second, covers incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under Section 90.629 of our

⁴ See n. 2, supra.

⁵ It is unclear whether even those SMR licensees that are capable of competing with other broadband CMRS systems enjoy the technical ability to provide manual roaming as defined herein. AMTA assumes that the Commission's decision is intended to require only what is achievable with state-of-the-art technology, not to impose immediately an obligation that may not be technically possible at present.

rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. R&O at ¶ 12.

Further, the Order clarifies that:

...the record does not establish that ubiquitous roaming capability is important to the competitive success or utility of mobile services other than those offered by cellular, broadband PCS and covered SMR providers....In particular, because they do not compete substantially with cellular and broadband PCS providers, local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration...are not covered by the roaming rule we adopt today. R&O at ¶ 14.

4. AMTA agrees that SMR systems offering the services described above should be exempt from the roaming requirement adopted herein. Clearly, they are not competing with cellular and broadband PCS for a mass market, consumer oriented subscriber base for which the wireless unit is perceived as an extension of, and perhaps ultimately a replacement for, the wired telephone instrument. Instead, these SMR systems typically offer interconnect capability as an ancillary feature to dispatch for particular business or governmental customers that want that option in a single unit.

5. Thus, AMTA is in full agreement with the Commission from a policy perspective. However, the Association does not agree that the FCC's policy determination is reflected in its covered SMR definition. It will encompass a large number of operators that provide precisely the primarily dispatch, business rather than consumer oriented, non-cellular-like configuration the FCC has determined should not be subject to a roaming obligation. A more narrowly tailored definition is required to achieve the Commission's own objectives.

6. As currently drafted, the definition appears to include every SMR providing a voice service with any interconnection capability that holds a geographic, as opposed to site-

specific, license, as well as those that are authorized for extended implementation. AMTA is unaware of any licensees that would be excluded because their service is not "real-time", a limitation that has no obvious applicability in this context. As described more fully below, AMTA would have assumed that the term "switched" was intended to limit the definition to systems with in-system switching capability comparable to that in a cellular or PCS system, a limitation that would be consistent with the policy underlying this rule. It does not interpret the term simply to mean that the system is interconnected with the public switched network because that condition is also part of the definition and, in any event, is unnecessary since CMRS systems are, by definition, interconnected.⁶ However, that limiting term is included only in the text of the Order, not in the definition in the rules themselves. Thus, it does not have any exclusionary utility.

7. The result is antithetical to the Commission's intention. For example, the FCC recently conducted an auction for already encumbered 900 MHz SMR spectrum in which it granted geographic licenses based on MTAs. Each winner was awarded the right to operate on ten 12.5 kHz channels, or a total of 250 kHz of spectrum, throughout the MTA, except in those areas in which a co-channel incumbent was already authorized to operate. A number of auction participants, and a significant percentage of successful small business bidders, were incumbents seeking to protect their ongoing operations by acquiring the right to the so-called "white space" in the MTA outside their existing operating areas. These parties had no choice except to acquire a geographic license if they wanted to ensure any expansion opportunity on their channels and prevent potential interference from an unrelated co-channel MTA licensee.

⁶ 47 C.F.R. § 332(d).

8. While their operational appetites might have been for a smaller coverage area, geographic MTA licenses were the only option on the FCC's menu. However, these licensees harbor no illusions about their competitive posture vis-a-vis cellular or broadband PCS. By comparison with their 250 kHz of capacity, each cellular licensee has 25 MHz of spectrum and PCS operators will enjoy either 10 or 30 MHz. There is no technology that would enable a licensee with 250 kHz of spectrum to deploy a system that would support the channel reuse and mobile handoff capability that enable cellular and PCS operators to target a consumer-oriented, mass market. Yet the definition in this Order would classify such systems as covered SMRs if they offered interconnect capability to even one mobile unit. That result is entirely inconsistent with the FCC's express intention.

9. AMTA anticipates that virtually all future SMR licenses, whether in the 800 MHz, 900 MHz, 220 MHz or other bands, will be awarded by auction. It further assumes that these authorizations will be geographic-based since auctions are manageable only when essentially fungible properties are being sold. It is highly unlikely that applicants, including incumbents like those at 900 MHz, will have a choice between a geographic or some less encompassing type of license. In fact, the FCC is actively considering a proposal whereby lower band 800 MHz SMR channels could be licensed and even auctioned on a frequency by frequency basis with a resulting Economic Area ("EA") geographic license. The licensees of such systems, if interconnected at all, would fall within the current definition of covered SMRs although they would control only 50 kHz of spectrum over a few counties, excluding areas already covered by incumbents. Again, this would be expressly contrary to the FCC's avowed intention.

10. It is clear that the covered SMR definition inadvertently includes many of the very SMR systems that the FCC intended not to burden with a roaming obligation. AMTA believes that the language refinement suggested below accurately captures that segment of the interconnected SMR industry that properly should be classified as viable competition for cellular and broadband PCS, and only that segment.

A. The Proposed Rule.

11. AMTA and the Commission are in agreement that only SMRs capable of competing with cellular and PCS should be defined as "covered" for purposes of these rules. Therefore, AMTA has endeavored to determine what factors distinguish traditional SMR systems from those seeking to compete in the consumer-oriented, CMRS mass wireless market.

12. The Association has identified one feature that, to the best of AMTA's knowledge, is present in all cellular and cellular-like PCS systems, as well as in SMR systems seeking to compete with them. Unlike traditional, local SMR facilities, systems in each of those categories have an in-network switching facility. It is that facility that enables the system to reuse frequencies dynamically and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to handoff communications between sites seamlessly without manual subscriber intervention.⁷

13. As noted, supra, the FCC already may have identified this switching capability as the appropriate line of demarcation between those SMR systems they intended to classify as covered, and those there were not to be subject to these rules. The text of the Order includes

⁷ AMTA notes that some local SMR systems incorporate a PBX-like "switch"; however, this equipment does not enable features such as frequency re-use or seamless handoff. Such systems, the Association believes, should not be included as covered SMR operations.

the term switched as a definitional feature of a covered SMR provider, but that word was omitted from the rules themselves.

14. Attached hereto as Exhibit A is the Association's proposed revision to the definitions of covered SMR provider and incumbent wide area SMR licensee. Because AMTA recommends use of the phrase "mobile telephone switching facility" in the description of this category, it also has included a definition of that term provided at Bellcore Wireless Interconnection '96.

15. The current covered SMR provider definition does not accurately capture the distinction articulated in the Order between SMR systems that were and were not intended to be subject to the roaming obligation. The public interest will not be served if SMR operators deactivate or forego the provision of interconnection because they are unwilling or incapable of satisfying this Commission requirement. Therefore, AMTA urges the FCC to modify its definition as proposed herein.

B. An Alternative Solution.

16. Alternatively, if the Commission is unwilling to adopt the revised language detailed above, AMTA requests that the covered SMR definition be modified to apply only to systems serving twenty thousand (20,000) or more subscribers nationwide. That modification would also be consistent with the FCC's intention to include only those SMR systems that are capable of competing with cellular and PCS systems. It is not the Association's preferred

solution because it is not tailored as precisely to reflect the system distinctions identified by the FCC. However, as described herein, it would be preferable to the current definition.⁸

17. As the Commission has recognized already in this proceeding, and as noted above, many SMR systems continue to offer a service that is localized, with individual stations providing discrete areas of coverage to subscribers within a particular market. A licensee may own multiple facilities, but the service is not "cellular-like". It does not reuse frequencies and does not permit automatic, seamless handoff.

18. These traditional-type SMR systems are inherently limited in the number of subscribers that can be served in any market. Without channel reuse, their capacity is restricted whether they employ analog or digital technology. A subscriber count of more than twenty thousand units nationwide does not necessarily indicate that the system has adopted a cellular-like system design since an operator might have multiple, totally independent, heavily loaded, traditional facilities.⁹ Similarly, it does not mean that a mass consumer market is being tapped. However, AMTA believes this cap would allow a very significant number of traditional operators, those the FCC intended to exclude, to be classified as not covered, while retaining covered status for the very largest systems that either currently have or may develop the potential to provide some level of competition for cellular and PCS.

⁸ The Association notes that the FCC has previously adopted subscriber figures, in the form of wireline "lines", to exempt rural telephone companies from more stringent regulatory requirements in its PCS proceeding.

⁹ The Commission should note the newly implemented PCS system in the Baltimore-Washington area is expected to have approximately one hundred thousand (100,000) subscriber units in operation less than a year after service was initiated.

III. CONCLUSION.

19. For the reasons described above, AMTA urges the Commission to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

PROPOSED DEFINITION FOR COVERED SMR SERVICES

Add new definition paragraph to § 20.3

Mobile Telephone Switching Facility. An electronic switching system that is used to terminate mobile stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Modify definitions - §§20.3 and 20.12

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer real-time two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network.~~

§ 20.12(a)

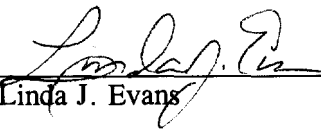
This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses (included in Part 90, Subpart S of this chapter) and who offer real-time two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network~~, and Incumbent Wide Area SMR Licensees.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 26th day of September, 1996, caused to be mailed a copy of the foregoing Petition for Reconsideration to the following:

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| <p>* Chairman Reed E. Hundt Federal Communications Commission 1919 M Street, N.W., Room 814 Washington, D.C. 20554</p> <p>* Commissioner James H. Quello Federal Communications Commission 1919 M Street, N.W., Room 802 Washington, D.C. 20054</p> <p>* Commissioner Rachelle B. Chong Federal Communications Commission 1919 M Street, N.W., Room 844 Washington, D.C. 20554</p> <p>* Commissioner Susan Ness Federal Communications Commission 1919 M Street, N.W., Room 832 Washington, D.C. 20054</p> <p>* Michelle Farquhar, Chief Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 5002 Washington, D.C. 20554</p> <p>* Gerald Vaughan, Deputy Chief Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 5002 Washington, D.C. 20554</p> <p>* Rosalind K. Allen, Deputy Chief Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 5002 Washington, D.C. 20554</p> | <p>* Karen Gulick, Associate Bureau Chief Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 5002 Washington, D.C. 20554</p> <p>* David Furth, Chief Commercial Wireless Division Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 7002 Washington, D.C. 20554</p> <p>* Sandra Danner, Chief Legal Branch Commercial Wireless Division Wireless Telecommunications Bureau Federal Communications Commission 2025 M Street, N.W., Room 7130-H Washington, D.C. 20554</p> <p>Sheldon Moss PCIA 500 Montgomery Street Suite 700 Alexandria, VA 22314</p> <p>Alecia Clemens Executive Director SMR WON P.O. Box 1922 Covington, LA 70434-1922</p> <p>Robert S. Foosaner Senior Vice President Government Affairs Nextel Communications, Inc. 800 Connecticut Avenue, N.W. Suite 1001 Washington, D.C. 20006</p> |
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Michael S. Hirsch
Geotek Communications, Inc.
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036


Linda J. Evans

*Via Hand Delivery